

ORDINANCE NO. 2480

**AN ORDINANCE OF THE CITY OF FREMONT, CALIFORNIA,
AMENDING TITLE IV OF THE FREMONT MUNICIPAL CODE BY
ADDING CHAPTER 11 PRESCRIBING REGULATIONS GOVERNING
THE INSTALLATION, REPAIR, REPLACEMENT AND USE OF WOOD-
BURNING FIREPLACES**

The City Council of the City of Fremont does ordain as follows:

Section 1:

WHEREAS, the State Air Resources Board (ARB) adopted a particulate matter (PM10), Ambient Air Quality Standard (AAQS) in December, 1982, and levels for the PM10 AAQS were selected under California Code of Regulations Title 17 Section 70200 to protect the health of people who are sensitive to exposure to fine particles; and,

WHEREAS, research indicates that woodsmoke is a significant contributor to PM10 levels that pose significant health risks; and,

WHEREAS, the City of Fremont desires to lessen the risk to life and property from air pollution from woodburning appliances; and,

WHEREAS, the Fremont City Council finds the proposed regulation will reduce the increase in particulate emissions from future installation and construction activities; and,

WHEREAS, the Fremont City Council finds a need exists to adopt regulations which apply to woodburning combustion emissions; and,

Section 2:

Title IV (SANITATION AND HEALTH) of the Fremont Municipal Code is hereby amended by adding Chapter 11 (WOOD-BURNING FIREPLACES) as follows:

CHAPTER 11 WOOD-BURNING FIREPLACES

Section 4-11000 Applicability.

This Chapter applies within the limits of the City of Fremont as specified herein.

Section 4-11002 Definitions.

- (a) "Bay Area Air Quality Management District" means the air quality agency for the San Francisco Bay Area under California Health and Safety Code Section 40200.
- (b) "E.P.A." means United States Environmental Protection Agency.
- (c) "E.P.A. certified wood heater," means any wood heater that meets the standards in Title 40, Part 60, Subpart AAA, Code of Federal Regulations in effect at the

time of installation and is certified and labeled in accordance with those regulations.

- (d) “Fireplace” means any permanently installed masonry or factory-built wood-burning appliance, except a pellet-fueled wood heater, designed to be used with an air-to-fuel ratio greater than or equal to 35 to 1.
- (e) “Garbage” means all solid, semi-solid and liquid wastes generated from residential, commercial or industrial sources, including trash, refuse, rubbish, industrial wastes, asphaltic products, manure, vegetable or animal solids and semi-solid wastes, and other discarded solid and semi-solid wastes.
- (f) “Gas fireplace” means any device designed to burn natural gas in a manner that simulates the appearance of a wood-burning fireplace.
- (g) “Paints” means all exterior and interior house and trim paints, enamels, varnishes, lacquers, stains, primers, sealers, undercoatings, roof coatings, wood preservatives, shellacs and other paints or paint-like products.
- (h) “Paints solvents,” means all original solvents sold or used to thin paints or to clean up painting equipment.
- (i) “Pellet-fueled wood heater” means any wood-burning appliance that operates exclusively on wood pellets.
- (j) “Solid fuel” means wood or any other non-gaseous or non-liquid fuel.
- (k) “Treated wood,” means wood of any species that has been chemically impregnated, painted or similarly modified to improve resistance to insects or weathering.
- (l) “Waste petroleum products” means any petroleum product other than gaseous fuels that has been refined from crude oil, and has been used, and as a result of use, has been contaminated with physical or chemical impurities.
- (m) “Wood-burning appliance” means fireplace, wood heater, or pellet-fired wood heater or any similar device burning any solid fuel used for aesthetic or space-heating purposes.

Section 4-11010 Approved appliances; when required; exceptions.

- (a) **Approved Appliances.** All wood-burning appliances described in section (b) must be one of the following approved appliances:
 - (1) a pellet-fueled wood heater;
 - (2) an EPA certified wood heater;
 - (3) a fireplace certified by EPA should EPA develop a fireplace certification program; or,

- (4) a fireplace certified by an EPA-accredited laboratory as emitting no more than 7.5 grams particulate per hour, using the Northern Sonoma County Air Pollution Control District's testing protocol for fireplaces or such testing protocol as approved by the Fremont Building Official.

(b) **When Required.**

- (1) A wood-burning appliance installed in a building must be an approved appliance described in section (a) if the appliance is installed as part of new construction, being added to an existing structure, or replacing an existing wood-burning fireplace;
- (2) An existing wood-burning appliance that is not an approved appliance must be replaced with an approved appliance when:
 - (A) remodel work near the wood-burning appliance causes the opening of walls within 12 inches of the appliance, and the cost of the total remodeling project exceeds \$65,000 or the cumulative cost of remodeling projects over two years exceeds \$85,000; or,
 - (B) the wood-burning appliance is being reconstructed, repaired or altered, the cost of the reconstruction, repair, or alternation is more than \$3,500.
- (3) The Building Official may from time to time adjust the triggering cost thresholds provided in this subsection to reflect changes in construction cost indexes as published in Building Standard Magazine or in another industry publication chosen by the Building Official.

(c) **Exceptions.**

- (1) **Historic buildings.** Historic buildings are exempt from the requirements of this Chapter. "Historical buildings" means those buildings designated as historic resources in the General Plan, buildings on any other City-adopted listing of historic resources, buildings which have been identified after appropriate analysis as being eligible for the State or National Register of Historic Places, or buildings recognized by the Historical Architectural Review Board as having historic merit.
- (2) **Gas-only fireplaces.** Gas fireplaces that do not burn wood are exempt from the requirements of this Chapter.
- (3) **Wood burning gas fireplaces not exempt.** Notwithstanding any other provision in this Chapter, a gas fireplace converted to burn wood must comply with the requirements of a new installation under section (b)(1).

Section 4-11012 Unlawful use of a fireplace; prohibited fuels.

It is unlawful to:

- (a) Use any wood-burning appliance when the Bay Area Quality Management District issues a “Spare the Air Tonight” warning and when an alternate approved heat source is available.
- (b) Use any of the following prohibited fuels in a woodburning appliance:
 - (1) Garbage
 - (2) Treated wood
 - (3) Plastic products
 - (4) Rubber products
 - (5) Waste petroleum products
 - (6) Paints
 - (7) Paint solvents
 - (8) Coal
 - (9) Glossy or colored papers
 - (10) Particle board
 - (11) Salt water driftwood

Section 4-11014 Building permit; required documentation.

Any person who plans to install a wood-burning appliance must submit documentation with an application for building permit to the Development and Environmental Services Department demonstrating that the appliance is an approved appliance under as provided in this Chapter.

Section 4-11016 Violation.

- (a) Violation of this Chapter is a misdemeanor punishable as set forth in Title 1, Chapter 3 of this Code, but may be charged in the discretion of the enforcement official as an infraction.
- (b) Any person violating any provisions of this Chapter may be issued an administrative citation by an enforcement official as provided in Title 1, Chapter 4 of this Code. The procedures authorized by this subsection shall be in addition to criminal, civil or any other legal remedy established by law which may be pursued to address violations of this Code.

Section 4-11020 Severability.

If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Counsel of the City of Fremont hereby declares that it would have passed and adopted this ordinance and all provisions thereof irrespective of the fact that any one or more of said provision be declared unconstitutional.

Section 3:

This ordinance shall be published once in The Argus, a newspaper of general circulation published and circulated in the City of Fremont, California. Within fifteen (15) days after its adoption and shall take effect and be enforced thirty (30) days after its adoption.

The foregoing ordinance was duly introduced before the City Council of the City of Fremont, County of Alameda, at the regular meeting of the City Council of such City, held on the 9th day of July, 2002 and finally adopted at a regular meeting of said Council held on the 23rd day of July, 2002 by the following vote, to wit:

AYES: Mayor Morrison, Councilmembers Wasserman, Pease and Cho

NOES: None

ABSENT: Vice Mayor Zlatnik

ABSTAIN: None

GUS MORRISON

Mayor

ATTEST:

APPROVED AS TO FORM:

RENEE ELLIOTT
Deputy City Clerk

SCOTT M. RENNIE
Sr. Deputy City Attorney